

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

- - - - -X
UNITED STATES OF AMERICA, :
 :
Plaintiff, :
 :
vs. : Case No. 4:13-cr-00147
 :
MO HAILONG, : SENTENCING HEARING TRANSCRIPT
 :
Defendant. : Volume I
- - - - -X

Courtroom, First Floor
U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa
Monday, October 3, 2016
9:00 a.m.

BEFORE: THE HONORABLE STEPHANIE M. ROSE, Judge.

KELLI M. MULCAHY, CSR, RMR, CRR
United States Courthouse
123 East Walnut Street, Room 115
Des Moines, Iowa 50309

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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P R O C E E D I N G S

(In open court with the defendant present.)

THE COURT: Thank you. You may be seated.

We are here today in the matter of United States vs. Mo Hailong. It's Case No. 4:13-cr-147. The probation office is represented by Stacy Dietch. The United States Attorney's Office is represented by Jason Griess, Marc Krickbaum, and -- I'm sorry. It's Matthew Walczewski, correct?

MR. WALCZEWSKI: Correct, Your Honor. Thank you.

THE COURT: And we're also joined by Deb DeGraff on behalf of the United States, who I assume will be helping with some technology issues during today's hearing.

We are also joined on behalf of the defendant by Attorneys Mark Beck, Mark Weinhardt, Holly Logan. And, of course, Mr. Mo is also personally present. And we have Lori Kreutzman as well to help with some technology issues on behalf of defense counsel.

Mr. Mo, do you recall being in court on January 27th of 2016 and pleading guilty to Count 1 of a two-count fourth superseding indictment that was filed against you in December of 2015?

THE DEFENDANT: Yes, I recall, Your Honor.

THE COURT: And that offense that you pled guilty to was conspiracy to steal trade secrets; is that correct?

THE DEFENDANT: Yes, correct.

1 THE COURT: And do you recall that this offense is
2 punishable, in the absence of your binding plea agreement, by up
3 to ten years in prison, a fine of up to \$250,000, a term of
4 supervised release of up to three years, and a \$100 special
5 assessment?

6 THE DEFENDANT: Yes.

7 THE COURT: And you understand you're here today to be
8 sentenced?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Thank you, Mr. Mo.

11 I have received and read the Presentence Investigation
12 Report. The most recent report is dated August 5th of 2016, and
13 it's filed at Docket 633 in the records of the Court.

14 I have also read and considered all of the arguments
15 contained in the sentencing memorandums, motions, and exhibits
16 that have been filed by the parties at Dockets 639, 640, 641,
17 643, 644, 645, 646, 649, and 650. I note by way of summary that
18 the sentencing memorandums and motions in this case totaled more
19 than 200 pages and the exhibits themselves accounted for another
20 probably 2500 pages of materials.

21 In addition to those memorandums, motions, and
22 exhibits, I have read the letters of support, and there were
23 many of them that I received, from Mr. Mo's friends and family,
24 associates and physicians, as well as the written allocution by
25 Mr. Mo himself.

1 Based on the parties' sentencing submissions, it
2 appears that we have a large number of objections to the
3 Presentence Investigation Report that we'll need to resolve.
4 This includes 65 objections to paragraphs of -- or objections to
5 65 paragraphs of the presentence report filed by the Government
6 and objections to 101 paragraphs of the presentence report filed
7 by the defendant.

8 We also need to resolve three guideline issues,
9 including the appropriate loss amount for purposes of
10 calculating a base offense level under 2B1.1, a determination of
11 whether or not the conspiracy was committed through
12 sophisticated means under 2B1.1(b)(10)(C), and a determination
13 of whether an aggravated role adjustment should be applied in
14 the case under 3B1.1. Next we'll have to tackle the restitution
15 issue for the victim seed companies in this case, Pioneer and
16 Monsanto. And we'll also ultimately have to determine
17 appropriate sentence under 18 U.S.C. 3553(a).

18 As I previously advised the parties, I will agree to
19 adopt and accept the Rule 11(c)(1)(C) plea agreement in this
20 case and so I will not impose a sentence of imprisonment of
21 greater than five years, as was agreed upon by the parties.
22 Where within the range of 0 months' to 60 months' imprisonment
23 Mr. Mo should be sentenced to remains an open question, as does,
24 as near as I can tell, all other aspects of the sentence to be
25 imposed, including supervised release or probation conditions,

1 fine, and things of that nature.

2 Mr. Griess, did you have a chance to review the
3 presentence report on behalf of the United States?

4 MR. GRIESS: I did, Your Honor.

5 THE COURT: And other than those matters that I have
6 just outlined that appear to still be open issues, are there any
7 other disputed facts or contested guideline matters I need to
8 resolve from the Government's perspective?

9 MR. GRIESS: No, Your Honor.

10 THE COURT: Thank you.

11 And, Mr. Weinhardt, did you have a chance to review
12 the presentence report with your client?

13 MR. WEINHARDT: Yes, Your Honor.

14 THE COURT: And can you briefly outline how you
15 accomplished that?

16 MR. WEINHARDT: Your Honor, that has been done both
17 through electronic transmission, because Mr. Mo has spent most
18 of his time in Florida and has been in telephonic and e-mail
19 communications with us, but then I also visited him in Florida
20 where we went over the draft presentence report. And then after
21 the final report was received, that was transmitted to him
22 electronically, and then he and I discussed it face to face
23 yesterday in preparation for today's hearing.

24 THE COURT: And other than the issues I have outlined,
25 anything else from Mr. Mo's perspective that I would need to

1 resolve today?

2 MR. WEINHARDT: Your Honor, I believe that the Court
3 has correctly outlined all of the issues that need to be
4 resolved in the sentencing.

5 THE COURT: Thank you, Mr. Weinhardt.

6 Mr. Mo, did you have plenty of time to review your
7 presentence report with your lawyers?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Were they able to answer any questions you
10 may have had about the report?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Have you been happy with them as your
13 lawyers in this case?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Good.

16 Then at this point I want to make some preliminary
17 rulings for the parties. I have, as I outlined, reviewed all of
18 the materials in this case, and I have, of course, been the
19 judge assigned to this case for the past 18 months and so I've
20 had extensive exposure to a fair amount of evidence in this case
21 because of the vast level of litigation that has happened.

22 We, as the parties recall, litigated 22 suppression
23 motions. There were 50 different subparts to motions in limine
24 that were filed that we litigated. There's been extensive
25 litigation over discovery. There's been FISA and classified

1 disputes. And so I have had and have reviewed over the course
2 of the last 18 months huge volumes of discovery in this
3 particular case, and in preparing for this hearing I reviewed,
4 of course, closely all of the matters filed by the defendant and
5 the Government.

6 I am able to make some rulings based upon this
7 information that are legal, essentially, rulings as opposed to
8 factual rulings. In doing that, I'm hoping that giving you this
9 preliminary outline helps us focus in on the issues that are
10 really still fighting issues in the case, and so I'll go over
11 those rulings now.

12 As to the objections to the presentence report, I can
13 rule on some of those now. As I noted earlier, the defendant
14 has lodged objections to 101 paragraphs of the Government's
15 offense conduct statement which is contained within the final
16 Presentence Investigation Report. I am overruling at this time
17 the vast majority of those objections.

18 Specifically, I am overruling any objection that is
19 lodged based upon the grounds that the particular paragraph is
20 vague, ambiguous, irrelevant, misleading, that it is factually
21 incomplete, because in reviewing each and every one of those
22 objections, I did find later that the information the defendant
23 complained of as being incomplete in a particular paragraph
24 certainly appears in later paragraphs of the Presentence
25 Investigation Report and so is contained in the presentence

1 report.

2 I overrule any objections based on objections to the
3 legal conclusions to be drawn from the facts alleged, such as
4 whether the defendant and his co-conspirators' activities of
5 chasing the self or reverse engineering is relevant conduct in
6 this criminal case. That's a legal decision that I'll make.

7 I also overrule all of the objections to the
8 recordings based upon the recordings being snippets or
9 conversations taken out of context. I have reviewed the full
10 body of those particular recordings and conversations.

11 Further, except as to the objections to presentence
12 report -- and here's the active ones that remain -- paragraphs
13 18, 22, 26, 28, and 35 through 38, I am overruling the
14 defendant's objections to the factual inaccuracy of those
15 paragraphs based upon the fact that I have reviewed material and
16 I believe those paragraphs to have been accurate based on
17 evidence that we've taken in this case.

18 In making that decision I am not relying on any
19 classified materials, I am not relying on any FISA materials
20 that were not ultimately provided to the defendant or ultimately
21 presented in open court. I am only making those decisions based
22 on what's been available to the defendant.

23 But, again, we have had extensive pretrial litigation
24 in this case, and so much of that evidence has been presented to
25 me, and in that pretrial litigation I did find the Government's

1 witnesses who testified, each and every one of them, to be
2 credible and to have presented relevant and accurate information
3 based upon everything that I've seen, and so I do overrule all
4 of those particular paragraphs.

5 As to those particular paragraphs, those are ones that
6 are largely focused on the value, of course, of the seeds and
7 the germplasm and the time that was involved in creating those
8 inbred seed lines by the victim seed companies, and so we'll
9 leave that open for discussion.

10 As to the Government's objections to the defendant's
11 offense conduct statement, I am going to overrule all of those
12 objections, basically for the reasons the defendant has
13 outlined. The defendant made kind of en masse objections to
14 each and every paragraph but didn't provide any grounds for
15 those objections, didn't tell me what the problems were with
16 those objections, and under Eighth Circuit case law, that means
17 they have to be overruled.

18 Now, to the extent there is a conflict between the
19 Government's offense conduct statement and the defendant's
20 offense conduct statement, I'll do what I do in any case where
21 there's a conflict, and I'll decide which version I find to be
22 more credible, and that may depend on which party has the burden
23 of persuasion or which party has the burden of evidence in that
24 particular case or on that particular point.

25 As to the legal issues that have been presented, I

1 also have some preliminary rulings. For aggravated role, even
2 if each and every fact the Government has alleged about Mr. Mo
3 is established to be true, I just can't find legally that
4 there's support here for an aggravated role adjustment in
5 Mr. Mo's case.

6 It's clear to me in reading everything that has been
7 presented in this case and in all of the evidence that's
8 previously been before the Court that Mr. Mo, every action he
9 took in this case was being directed. He, in fact -- and I
10 don't say this to be disparaging towards Mr. Mo, but his
11 co-conspirators spent a whole lot of time in these recordings
12 basically mocking and criticizing Mr. Mo.

13 His concerns, which are articulated over and over
14 again in recordings and in e-mails back with the folks in China,
15 are ignored. He possessed, evidently, very little ability to
16 say no and very little ability to decline the requests of his
17 very powerful brother-in-law back in China.

18 But there's no evidence that he was the decision-maker
19 or the organizer of what occurred either in China or the United
20 States, and so unless there is evidence that the Government has
21 not shared with me yet, and I don't know what that might look
22 like, I can't find in this case that an aggravated role
23 adjustment applies.

24 Similarly, and on the flip side, even if every fact
25 the defendant has alleged is true, this is clearly a

1 sophisticated criminal act. There were clearly sophisticated
2 means being used by this organization. And that's under either
3 the 2012 or the 2015 guidelines.

4 This is an offense that spanned many, many years and
5 at least two countries. The co-conspirators, without dispute,
6 traveled to Canada to avoid detection, at least in part.

7 Without dispute the co-conspirators used both domestic and
8 international air travel to avoid detection.

9 Farmland was purchased in another state to perpetuate
10 this ruse of legitimacy and to provide cover for certain
11 activities. Encrypted communications were being used by these
12 parties. Fictional cover stories were created to cover the
13 purpose of their appearance in certain farm fields. Evidence
14 was stored and collected in various states. And, in fact, here
15 so complicated and sophisticated was this crime that the
16 Government had to resort to FISA to track down and to
17 investigate this group.

18 In short, under no legal analysis I can find is there
19 less than a preponderance of the evidence that this was a
20 sophisticated operation of the type 2B1.1(b)(10)(C) intended to
21 punish.

22 With respect to intended loss -- and I think that is,
23 I think, where the fighting dispute is for relevant conduct
24 analysis is intended loss as opposed to actual loss -- this has
25 been the big one since Mr. Mo pled is this issue of loss because

1 it does drive the guidelines so heavily.

2 The parties have given me more paperwork than I've
3 seen in any other case on loss; all of the scientific analysis,
4 all of the financial analysis. The parties have very divergent
5 views of what the loss was in this case. The defendant alleges
6 there was zero loss. The Government alleges there was more than
7 \$550 million of loss. The defendant voraciously objects to the
8 defendant's -- or the Government's version of events. The
9 Government just as voraciously objects to the defendant's
10 versions of events. We have motions to exclude evidence that
11 have been filed Friday afternoon in Docket 650 regarding the
12 timing of the Government's disclosure of certain loss evidence.

13 So I want to make some preliminary findings and then
14 let the parties adjust accordingly.

15 First, the defendant's claims, and this is my legal
16 conclusion, that his co-conspirators' efforts to chase the self,
17 to commit patent infringement, and to violate the seed bag
18 contracts were not illegal is, in my view, irrelevant. Those
19 are still things that are part of relevant conduct, in my
20 opinion.

21 Accepting -- even if I accept that argument that the
22 defendant has made that those things themselves were all legal,
23 that the patent infringement was legal because it's not illegal,
24 that the violation of the bag contracts was legal because it's a
25 civil matter, that the chasing of the self or reverse

1 engineering is a legal act, those still have to be viewed in the
2 context of the greater conspiracy to steal trade secrets, just
3 as in a more simple meth manufacturing conspiracy case there are
4 certain things that are purchased that are legal and certain
5 things that are stolen.

6 For instance, a co-conspirator can walk into a Walmart
7 and purchase lithium batteries legally, they can purchase
8 pseudoephedrine to a certain extent legally, and then often they
9 go steal the anhydrous ammonia, but those actions of purchasing
10 the lithium batteries, purchasing the pseudoephedrine are
11 clearly relevant conduct because they are paired with the stolen
12 anhydrous ammonia and they are part and parcel with the
13 conspiracy to manufacture methamphetamine.

14 And that is, in my opinion, what we have here. The
15 female inbred seeds that the defendant managed to commercially
16 purchase and mail back to China and that were ultimately
17 reverse-engineered or that they did this chasing the self
18 process to try and find the -- among those commercially
19 available hybrid seeds, the .5 percent of the inbred female
20 seeds are, in my view, every bit as relevant as the theft of the
21 male inbred seeds.

22 The evidence shows that China was -- and I say China
23 because they refer to it as the "home country" in their
24 conversations. The evidence shows China was uninterested in the
25 unpaired male seeds. They wanted to know what males were paired

1 with what females.

2 And this is borne out explicitly in a conversation,
3 and here I'm citing the Government Exhibit 1.42, in which Mr. Mo
4 is discussing the need for coupled pairs, and he is told by his
5 co-conspirator back in China, quote, the home country only cares
6 about the value of the breeds produced by grouping and coupling
7 when it comes to parent related transactions. They consider the
8 parent good only if the breeds from grouping and coupling are
9 good.

10 In this very same conversation, the defendant and his
11 co-conspirators reject the idea of pairing their own female
12 seeds with American male seeds because they risked them -- that
13 these pairings won't be as good as the Americans' pairing is
14 just too much for them to bear, and so they talk about the risk
15 of trying out their luck and having it not pan out for them.

16 And so it becomes quite clear that the female seed
17 lines, however they were achieved, whether commercially or
18 through patent infringement or through chasing the self or
19 reverse engineering, are equally important to this criminal
20 organization as the male lines, and it's crystal clear that DBN
21 needed to find and locate the males and females together to
22 understand what the groupings and pairings were.

23 So because of those things, I find that all of the
24 activities where they've stolen unique seed lines are relevant
25 conduct in this case regardless of the underlying legal status

1 of those seeds because it is the pairing of them that is part of
2 the trade secret analysis in this case.

3 Second, even if I were to sanction here the
4 Government's arguably untimely production of loss evidence and
5 grant the Government's -- I'm sorry -- the defendant's request
6 to set aside all of that loss evidence that has been produced
7 after June 1st, I still think there is undisputed evidence that
8 overwhelmingly establishes an enormous loss in this case.

9 For instance, as noted in PSR paragraph 62 -- and this
10 is undisputed facts; the legal conclusion the defendants dispute
11 but undisputed facts -- that during a 2010 conversation between
12 Mr. Mo and DBN breeder Che or Che, it's C-h-e, Defendant tells
13 Che in a discussion about China's weak male parent seeds that
14 U.S. seed companies are willing to sell one parent for \$1
15 million, meaning a female or male inbred seed line.

16 After this conversation the co-conspirators -- and
17 they reject that idea as too costly to them. And so after this
18 conversation the conspirators begin traveling throughout the
19 Midwest stealing corn seed.

20 And then in August of 2012, as described in
21 presentence report paragraph 92, Che discusses with another
22 conspirator, Yin, that they believe they have successfully
23 stolen about 150 distinct inbred seed lines, and after those
24 seeds arrive in China, Dr. Li reports to the defendant that the
25 co-conspirators have been able to steal between 120 and 130

1 different varieties of inbred seeds.

2 And then further discussion happening in PSR paragraph
3 74 is that the defendant and two of his co-conspirators managed
4 to steal 200 unique varieties of corn from Pioneer and Monsanto
5 in the fall of 2011.

6 Now, Mr. Mo had reported to his boss that these unique
7 seed lines could be purchased by his company for a million
8 dollars each. DBN had rejected that option as too costly to
9 them and then had commented that they wanted to, and I quote
10 here, use the foreigners' technology to beat them and to, quote,
11 buy China here time to research and develop their own products
12 before having to acquire those seed lines through other means.
13 That's found, again, at Government Exhibit 1.42.

14 Now, I'm not certain, it seems unlikely to me, that
15 Monsanto and Pioneer would actually have sold those seed lines
16 for a million dollars each. I think it's highly unlikely that
17 would occur. But the conversation is compelling in that it does
18 amply demonstrate what the intentions of this group were and
19 that the intended loss to Pioneer and Monsanto were, in their
20 view, a million dollars for every one of these seed lines that
21 they managed to acquire.

22 And we know that they managed to acquire, based on
23 these undisputed paragraphs alone, 320 seed lines during this
24 period of time, and if each one of those seed lines is worth a
25 million dollars, we have a loss of \$320 million, and that's

1 before we even talk about research and development costs to
2 Monsanto or Pioneer, historical or specific. It's before we
3 talk about the sales potential for those. It's before we talk
4 about any of the loss Pioneer and Monsanto incurred in defending
5 this case and in responding to discovery in this case.

6 A \$320 million loss under either of the guidelines,
7 whether it's 2012, 2013, or 2015 that we're using, corresponds
8 to a base offense level of 28 -- or an increase of 28 levels.
9 If you put that with our initial base offense level of 6 and you
10 include the sophisticated means enhancement and then you
11 subtract three levels for acceptance of responsibility, we're
12 talking about a total offense level of 33, and at a criminal
13 history category of I, this creates or would create an advisory
14 guideline range of 135 to 168 months' imprisonment, although
15 that would cap at 120 months because of the statutory penalties
16 available here, and that is more than twice what the parties
17 agreed to as part of the 11(c)(1)(C) sentence of 60 months'
18 imprisonment.

19 So in short, we can spend a whole lot of time talking
20 with the seed companies about what their R&D costs were and what
21 the market value of these stolen seed lines were or we can rely
22 on what the defendants said about what they were trying to do in
23 their own conversations that were recorded in this case or
24 captured in this case by various surveillance means, and we can
25 trust that they meant what they said, that they intended a loss

1 to Pioneer and Monsanto of a million dollars per seed line they
2 managed to steal. We know they managed to steal at least 320 of
3 those seed lines based upon just those two recorded
4 conversations or transactions that we have.

5 Now, \$320 million in intended loss under a relevant
6 conduct analysis is quite different than what's owed in
7 restitution because, of course, the restitution goes to actual
8 loss and it goes only to actual loss for the instant offense of
9 conviction and not to the greater relevant conduct for the
10 conspiracy itself.

11 I absolutely do believe that Pioneer and Monsanto are
12 entitled to recoup their legal fees and costs entitled in this
13 particular case, but I also agree with Mr. Weinhardt or the
14 defense team's claim that I don't have before me yet sufficient
15 evidence to make that decision. I have some broad stroke
16 information about what they spent, but I need much more detailed
17 information about how that time is allocated. Was it in court?
18 Was it travel costs? Was it copying costs? Was it responding
19 to discovery requests by the Government or the defendant? Was
20 it grand jury testimony? I need to know more about what that
21 is.

22 So we'll have to make a decision about whether or not
23 we want to take that evidence and then have a restitution
24 hearing sometime down the road that comports with the 60-day
25 notice requirements or whether we want to proceed now with some

1 information about that and the defendant wants to waive that
2 60-day period. I don't think he does based upon the litigation
3 we've seen. But, again, we'll have to tackle that issue at some
4 point in the next couple days.

5 So in summary, I would suggest that we focus our
6 efforts on variance matters. I would suggest that we focus on
7 the actual restitution matters that are left before us. I see
8 those as the major fighting issues that remain.

9 But, of course, the parties are entitled to present
10 evidence, if you want to, to try and change my mind about these
11 issues. I do ask that you don't simply repeat the legal
12 arguments you've made. I've read all of those. I understand
13 what you're saying. I've done the research. And so I don't
14 think we need additional information by way of argument, but if
15 you have testimony or evidence that you think is necessary
16 either to create a more robust record or because you think my
17 conclusions are wrong and new evidence would change my mind,
18 then we can do that.

19 So I would suggest we take now about a 20-minute break
20 and let you talk with your witnesses, let you talk with each
21 other, and formulate a plan for how we go forward with the rest
22 of our morning and the rest of our day.

23 Anything that you need from me before we take that
24 break? Any other questions that you have?

25 MR. GRIESS: No, Your Honor.

1 THE COURT: Mr. Griess?

2 Mr. Weinhardt?

3 MR. WEINHARDT: No, I don't think so, Your Honor.

4 THE COURT: Okay. Then let's go ahead and take a
5 20-minute break. We'll be back here at 9:50. Thanks.

6 (Recess at 9:30 a.m. until 10:05 a.m.)

7 THE COURT: Okay. Then we are back on the record in
8 the matter of United States vs. Mo Hailong. The parties have
9 had a chance to talk both with their own teams of attorneys and
10 witnesses and agents as well as with each other about how to
11 proceed and have come up with a proposal.

12 Mr. Weinhardt, would you like to outline what that
13 proposal is?

14 MR. WEINHARDT: Yes, Your Honor. In light of the
15 legal rulings that the Court gave to the parties this morning,
16 both sides are willing at this point to spare the Court from any
17 further evidence presentation regarding offense conduct.

18 There are still, in light of the Court's rulings, some
19 guidelines issues that the parties wish to discuss, but the
20 parties would propose that they give a stipulated guideline
21 range to the Court by e-mail this afternoon.

22 When I say stipulated, I wanted to make sure that for
23 record purposes it is a stipulation as constrained by the
24 Court's legal rulings. We're still --

25 THE COURT: Sure.

1 MR. WEINHARDT: -- maintaining all of the positions
2 that we've urged in our briefs about what we think the right
3 guideline calculation ought to be.

4 But subject to the Court's rulings, we would propose
5 to the Court a stipulated guideline range. That, then, really
6 for both sides, eliminates the remainder of the evidentiary
7 presentation that we had proposed for today. We would propose
8 that we then move to the evidentiary presentation from the
9 parties regarding variance. We're not able to do that today
10 because we didn't anticipate we would save this time. Our
11 witness, Mr. Wise from the former BOP medical service, is not
12 available until tomorrow, but we would anticipate presenting his
13 testimony tomorrow.

14 THE COURT: And is there a time that works best for
15 that?

16 MR. WEINHARDT: Because he gets here somewhat later in
17 the day today, if we didn't have to start right at 9 a.m. but
18 could maybe be like at 10:30 so that we would have some time
19 with him in the morning, that would be helpful.

20 THE COURT: That would be fine with me.

21 Does that work for you, Mr. Griess?

22 MR. GRIESS: It does.

23 THE COURT: Okay. So we will reconvene tomorrow
24 morning at 10:30.

25 Mr. Weinhardt, continue with your summary.

1 MR. WEINHARDT: Our other live witness on the variance
2 issue is Dr. Romanoff, and Dr. Romanoff, as we told the Court in
3 chambers, is observant, and it's Rosh Hashanah, and he cannot be
4 here until late tomorrow night, and so we would anticipate
5 calling him on Wednesday morning. Again, a little time that
6 morning would be helpful, and I think that we would still have
7 ample time thereafter to get the case argued and have the Court
8 issue its determination, if it's willing, in the afternoon. So,
9 again, maybe 10 or 10:30 start on Wednesday would be what we
10 would request.

11 THE COURT: 10:30 would be fine with me on Wednesday.
12 Does that work for you, Mr. Griess?

13 MR. GRIESS: It does.

14 THE COURT: And based upon our discussions earlier
15 today, it's likely we will take Dr. Romanoff's testimony in a
16 sealed courtroom, given the nature of the testimony that is
17 going to be presented and the privacy interests that it raises.

18 So to the extent anybody who is here in the audience
19 was interested in coming back, Wednesday will likely be a closed
20 session, at least during his testimony.

21 Did the parties discuss -- and I apologize, I should
22 have brought this up when you were back in chambers a few
23 moments ago. Did you have any discussion about restitution? In
24 other words, are you preparing or will you be presenting
25 additional evidence about, in particular, the attorneys' fees?

1 MR. GRIESS: Your Honor, no, we didn't discuss that,
2 but I anticipate that is something we can discuss this afternoon
3 and include in our communication back to the Court today.

4 THE COURT: Okay. Then, Mr. Weinhardt, you can --

5 MR. WEINHARDT: That's what we'd like to do. We're
6 not prepared to a make a decision at this point.

7 THE COURT: We'll push that one to the side for now.
8 I will go ahead and accept the proposal of the parties. I
9 appreciate your willingness to work with each other and, of
10 course, to narrow the issues before the Court. I think those
11 are all reasonable decisions in light of what's been decided.

12 Given that the Government is no longer proposing
13 offering this morning or today the testimony of the seed
14 companies on loss, I will deny as moot the motion filed at 650,
15 which is the motion to exclude that testimony, given that it's
16 now no longer going to be presented to the Court.

17 Anything else to take care of today, then?

18 MR. WEINHARDT: Nothing for the defense, Your Honor.
19 Thank you.

20 THE COURT: Mr. Griess?

21 MR. GRIESS: No, Your Honor.

22 THE COURT: Okay. Then I'll see everybody at 10:30
23 tomorrow. Thank you.

24 (Recess at 10:10 a.m. until 10:30 a.m., Tuesday,
25 October 3, 2016.)

1 C E R T I F I C A T E

2 I, Kelli M. Mulcahy, a Certified Shorthand Reporter of
3 the State of Iowa and Federal Official Realtime Court Reporter
4 in and for the United States District Court for the Southern
5 District of Iowa, do hereby certify, pursuant to Title 28,
6 United States Code, Section 753, that the foregoing is a true
7 and correct transcript of the stenographically reported
8 proceedings held in the above-entitled matter and that the
9 transcript page format is in conformance with the regulations of
10 the Judicial Conference of the United States.

11 Dated at Des Moines, Iowa, this 26th day of October,
12 2016.

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15 /s/ Kelli M. Mulcahy
16 Kelli M. Mulcahy, CSR, RMR, CRR
 Federal Official Court Reporter

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